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THE "VIRGINIUS" CASE,

AS REVIEWED IN

ENGLAND

AND REGARDED BY

THE NEW YORK HERALD.

New York.

1874.



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NOTE.

As the reparation obtained by England in the case of the steamship *Virginus* has elicited from the *New York Herald* an article which no American can read without a thrill of indignation mingled with shame, so that article leads us to reprint, together with it, a review of the same case, as published in the London *Transatlantic Magazine*, and the letter which, as given to the public through the press towards the close of December last, was addressed by the owner of the aforesaid steamer to Secretary FISH upon the subject. The tenor of the review shows that it was written from the United States, probably last summer, when the *Herald* reproduced a leader of the London *Times* concerning the rights and attitude of England in the premises, which caused several journals of this city and elsewhere to refer once more to the claims of the United States in that bloody case.

These three papers, bound together in pamphlet form, contain a full exposition of the case in a few pages: the review comprising the facts and showing that Secretary FISH appreciated them correctly, but failed, however, to fully attain the redress due to the United States in face of such facts; the letter alluded to setting at naught the opinion of Attorney-General WILLIAMS as to the ownership of the *Virginus*, and the article already mentioned containing a parallel between British and American action upon the subject, which is as creditable to Great Britain as humiliating to the United States.

NEW YORK, Oct., 1874.

The Steamship "Virginus" Again.

(From the London *Transatlantic Magazine* for October 1874.)

It seemed that the case of the ill-fated *Virginus* was buried forever in the famous protocol agreed to between our Secretary of State and the Spanish Minister at Washington for a settlement of that case. But it seems also that a recent thunder of the London *Times* with regard to the claims of England in the premises, has so forcibly reverberated into Washington, that the documents on file at the State Department have been shaken, and the protocol alluded to brought forward into full view once more. True, the attitude of Great Britain, as referred to by the London *Times* for redress due to British subjects in the case under notice, has created a sensation in Washington, and threats of compelling Spain to make amends for wrongs to American citizens in the same case have since been freely indulged in through the press and otherwise. Whether the United States have any claim left under the decision of the Attorney-General pursuant to the terms of the protocol is doubtful; whilst the claims of England for the massacre of 16 of her subjects among the crew and passengers of the *Virginus* cannot be doubted. But as Spain may allege that according to that decision, which was accepted by this Government under the protocol, no claim can be entertained, it would not be amiss to lay before the public a review of the *Virginus* case.

The steamship *Virginus* duly owned by a citizen of the United States, and accordingly sailing under the American flag with all her papers in proper order, was chased, fired at, brought to, and captured by a Spanish war vessel on the high seas. Nothing likely to afford the slightest pretext for such an outrage was

found on board the *Virginius*, beyond the usual supply of coal and the necessary provisions for her crew and passengers. Yet she was taken as a prize to Santiago de Cuba, where shortly thereafter the Spanish authorities commenced putting to death her passengers and crew, and had butchered 53 of them, when a British man-of-war arrived at that blood-stained place, and put a stop to the revolting butchery. The mere capture of the vessel under the circumstances before mentioned, involved a wanton outrage to the United States; whilst the bloody work of the Spaniards over her unfortunate crew and passengers rendered that outrage hideous, and made humanity stand aghast at the crime arising therefrom. These outrageous and criminal deeds perpetrated on the plea that the *Virginius* was in the service of Cuban insurgents against Spanish rule in Cuba, were on the other hand, aggravated by the fact that among the men slaughtered without any other process of law than a drumhead court-martial were many American citizens, who, according to treaty obligations between Spain and the United States, ought to have been fairly and legally tried. But what has been the action of this Government in the face of such deeds? Let us see.

Official information of the capture of the *Virginius* by the Spanish war vessel *Tornado* on the 31st of October last, reached this Government first from Havana on the 5th, and next from Madrid on the 6th of the subsequent November. On the 7th Secretary FISH telegraphed upon the subject to General SICKLES, United States Minister at Madrid, as follows:

“The capture on the high seas of a vessel bearing the American flag, presents a very grave question which will need investigation, and the summary proceedings resulting in the punishment of death, with such rapid haste, will attract attention as inhuman and in violation of the civilization of the age. And if it prove that an American citizen has been wrongfully executed, this Government will require most ample reparation.”

Close upon the expression of this language, as if to test it, a telegram from Mr. HALL, the United States Consul-General at Havana, reached the State Department informing the Secretary that RYAN, an American citizen, and three of his fellow passengers by the *Virginius* had been executed on the 4th: but although such information was borne out by a telegraphic despatch which

on the 8th also reached Mr. FISH from Madrid, he did not stir until the 12th, when in receipt of another telegram from the same Consul reporting the massacre of the captain and 36 of the crew of the *Virginus* on the 7th, and 12 of her passengers on the 8th, the Secretary of State telegraphed once more to General SICKLES with reference to so startling a report, and said :

“If the report be confirmed you will protest in the name of this Government and of civilization and humanity, against the act as brutal, barbarous, and an outrage upon the age; and you will declare that this Government will demand the most ample reparation of any wrong which may have been committed upon any of its citizens, or upon its flag.”

The report giving rise to this language was soon fully confirmed. Its confirmation fell upon the public mind throughout the United States like a firebrand into a vast powder magazine. The explosion shook the whole country, and constrained Mr. FISH to address on the 14th the following despatch by telegraph to General SICKLES, viz :

“Your telegram announcing adjournment of conference received. Unless abundant reparation shall have been voluntarily tendered, you will demand the restoration of the *Virginus*, and the release and delivery to the United States of the persons captured on her who have not already been massacred, and that the flag of the United States be saluted in the port of Santiago, and the signal punishment of the officials who were concerned in the capture of the vessel, and the execution of the passengers and crew. In case of refusal of satisfactory reparation within 12 days from this date, you will at the expiration of that time, close your legation, and will, together with your Secretary leave Madrid, bringing with you the archives of the legation. You may leave the printed documents constituting the library in charge of the legation of some friendly power which you may select, who will consent to take charge of them.”

The telegram acknowledged in the foregoing despatch bears date of the 13th at Madrid over the signature of General SICKLES, and commences thus :

“Conference appointed for this afternoon adjourned by Minister, because he had received at a late hour last night information from the Captain-General that 49 of the persons on board the *Virginus* had been shot on the 7th and 8th instant.”

This acknowledgment on the part of the Spanish Government itself, cleared the way entirely for Mr. FISH to proceed vigorously forward and redeem his above quoted language, by compelling Spain to make full reparation for the outrageous and criminal acts perpetrated under her authority in the case of the *Virginius*. But how did he proceed further on in the premises? Let the answer be found in his subsequent correspondence with General SICKLES, and his dealings with Admiral POLO, the Spanish Minister in Washington.

On the 15th a telegram of that date reached Mr. FISH from General SICKLES in these words :

“Received an ill-tempered note to-day from Minister of State, rejecting protest, and saying Spain would nevertheless, consider and decide questions according to law and her dignity.”

The protest here alluded to, is that which, in obedience to the telegraphic dispatch of the 12th from Mr. FISH, General SICKLES made in a note addressed by him under date of the 14th to Mr. CARVAJAL, the Spanish Minister of State, who in his answer remarked :

“The protest having been presented in general terms and without relation to any wrong inflicted on the American Union, the Government of the Spanish Republic cannot recognize your competency to make it, even as Spain would have had no such right with respect to the sanguinary acts which have happened in our own day, as well in the United States as in other nations of the old and new continents. The protest being thus rejected with serene energy, I have to fix my attention upon the harshness of style, and upon the heated and improper words you used to qualify the conduct of the Spanish authorities. If the document subscribed by you lacks the solemnity which might be lent to it by the right to address it to me, the temperance of its form ought at least to have demonstrated that it was not dictated by passion.”

This quotation comprises but two short paragraphs of the Spanish note in which General SICKLES was so sharply lectured, and to which he replied on the 15th, closing his reply with these words :

“And if at last, under the good auspices of Mr. CARVAJAL, with the aid of that serenity that is unmoved by slaughter and that

energy that rejects the voice of humanity, which even the humblest may utter and the most powerful cannot hush, this Government is successful in restoring order and peace and liberty where hitherto, and now, all is tumult and conflict and despotism, the fame of this achievement, not confined to Spain, will reach the continents beyond the seas and gladden the hearts of millions who believe that the New World discovered by Columbus is the home of freemen and not of slaves."

On the 18th General SICKLES addressed to Mr. FISH the following telegram :

"Minister of State replies to-day, under date of 17th, to my note of 15th, making demand in terms of your cable of the 14th. After an inaccurate statement of our negotiations, Minister, in reply to the demand, declares:—First. That Spain will take no resolution until she is satisfied an offence has been committed against the flag of the United States. Second. If it shall hereafter appear that, in violation of treaties, or of the law of nations, an injury has been done, Spain will cheerfully make due reparation.

"Regarding this as a refusal within the sense of your instructions, I propose, unless otherwise ordered, to close this legation forthwith, and leave Madrid, embarking at Valencia for France, taking the secretary and archives with me."

On the 19th Mr. FISH telegraphed to General SICKLES thus :

"Last evening Spanish Minister communicated to me by direction of his Government a telegram of yesterday's date, declaring the resolution of his Government to abide by the principles of justice, and to observe international law, to comply with the letter of treaties, and to punish all those who shall have made themselves liable to punishment, regardless of their station, and to make reparation if right should require it, urging at the same time that a knowledge of facts is necessary to proceed with the judgment required by the gravity of the case, and that the news which had reached them, like that received here, must be confused.

"The telegram to the Spanish Minister is subsequent in date to the Minister's note of 17th to you, and may be regarded as a reconsideration of later decision of the Government. Appreciating this fact, and determined to continue to be right in the

position he has assumed, the President holds that the demand for a proper length of time to learn the exact state of the facts is reasonable. In view of this request you will defer your immediate departure from Madrid, and await further instructions."

On the 20th General SICKLES answered Mr. FISH by telegraph as follows:

"If permitted to offer a suggestion with reference to your instructions of the 19th, I would remark that the tone, temper, and substance of the written communications made to me by the Minister of State are very different from the apparent purport of the telegram sent to the Spanish Minister in Washington, and communicated to you. The refusal to say a word about the merits of the case, in reply to a demand repelled as arbitrary, inadmissible, and humiliating, was announced to me here on the same day that different professions were made to you. Mr. CARVAJAL'S notes to me are exhibited here as showing the real position of the Government. They are offensive in form and unsatisfactory in substance. If we hesitate, it will be asserted and believed in Spain and Cuba that we pause before the defiant attitude assumed by this Government and people. This boast will be supported by the official and formal declaration of this Cabinet in reply to communications I have made to it, in obedience to your instructions. Misapprehending our forbearance, Spain would abuse any success obtained by duplicity and delay, and show herself more than ever arrogant and regardless of our rights and dignity. On the other hand, any concession now obtained at Washington will appear to corroborate the intimation made here in high quarters and generally believed, that my action in the matter of the *Virginus* has not been in conformity with the instructions I have received, and is not approved by my Government. I have the best reasons for the opinion that my prompt withdrawal from Madrid in default of the reparation the President has directed me to demand, will convince Spain we are in earnest, and she will yield our terms and peace may be honorably preserved. The fact that Spain holds one attitude here, and presents another in Washington on the same day would seem to impeach her sincerity, and this dissimulation I am sure is due to the fear of a diplomatic rupture, or something worse. This Cabinet have already obtained all the information they will ever get from Cuba about this transaction.

"The Italian Government has kindly consented to allow Count MAFFIE, Charge d'Affaires of Italy in Madrid, to take care of American Interests here, and accept the custody of the library and property of this legation, on application being made by your authority through our Minister in Rome. I hope you will make the request, and that this courtesy be duly acknowledged."

On the 21st Mr. FISH telegraphed to General SICKLES in reply, and said :

"Your telegram, suggesting a possible difference of attitude on the part of Spain in Madrid, and here, which you think calls for your withdrawal from Madrid, and asking a request to the Italian Government to authorize its representative to take care of our library at Madrid has been laid before the President, who decides that public interests require that you should remain at your post until expiration of time heretofore named, or until further orders. If a difference exists, as you suggest, the President feels it his duty to take into consideration the representations made at Washington, which approach most nearly to compliance with our just demands, and he depends upon you to co-operate with our efforts to induce Spain to make such concessions as may avert a rupture between the two Republics, without questioning the sincerity of the Madrid Cabinet. It will not be possible to send a vessel to Valencia."

By these instructions the negotiations were virtually withdrawn from Madrid to Washington, General SICKLES remaining however, at his post as instructed, and communicating daily with Mr. FISH by telegraph upon the subject.

Up to this time the official intercourse between the Secretary of State and the Spanish minister at Washington on the case under review, had been light and limited mainly to transmission from the latter to the former of telegrams from Havana and Madrid misrepresenting the facts in the premises. But on the 21st Admiral POLO called at the State Department, and had an interview with Secretary FISH concerning arbitration of the question at issue through a third power, as suggested by the Spanish Minister of State in a telegram from him to the Admiral, who handed it to the Secretary on the previous day. At that interview "Mr. FISH remarked that while the Government of the United States was most sincerely and earnestly desirous of an

amicable and honorable adjustment of the question and was ready to refer to arbitration all questions which are perfectly subjects of reference, the question of an indignity to the flag of the nation, and the capture in time of peace on the high seas of a vessel bearing that flag and having also the register and papers of an American ship, is not deemed to be one which is referable to other powers to determine; that a nation must be the judge and custodian of its own honor, and that he could not doubt that Spain herself, ever sensitive to the protection of her own honor, and ready to do justice, would appreciate the impossibility of the reference of such a question, and that until atonement be made to the wounded dignity and sovereignty of this Government, it cannot entertain a proposition of arbitration by reference to other powers."

Then Mr. FISH adverted to the pressure of an indignant people as likely to bring about a rupture between two friendly nations in default of speedy reparation for the wrongs complained of, and went on to refer "to the execution, in contravention of the provisions of the Treaty of 1795, of American citizens captured on board the *Virginus*, and the refusal to them of the rights guaranteed by that treaty of the services of advocates and of the presence of agents at their trial and at the taking of examinations and evidence, and to the detention of those captured under the flag of the United States, who had escaped the cruel and hasty executions which the authorities at Madrid would never justify."

On the 24th Admiral POLO received another telegram from the Foreign Office at Madrid, which he handed to Mr. FISH, and which contained these propositions:

"*First.* Our disposition being known, would the United States agree to wait for our solution which would be immediate on receipt of the facts in the case? *Second.* Would the President, notwithstanding the foregoing, still insist on submitting the question to Congress? *Third.* Could Mr. FISH at once designate the points of offence in view of treaty obligations and international law?"

Mr. FISH answered in a memorandum which he handed to Admiral POLO, and which ran thus:

"1st. The request is indefinite. No time is named within which the facts may be ascertained. Past experience in cases

of reclamation for offences in Cuba will not warrant us in entering into an agreement which practically amounts to an indefinite postponement. 2nd. It will be impossible for the President to refrain from communicating the facts to Congress. It is his constitutional duty to do so, and the importance and gravity of the case are such as will doubtless lead Congress to desire immediately to have a full knowledge of all the facts known to the President. 3rd. Generally the points of offence are, the capture on the high seas by the Spanish war steamer *Tornado*, during the time of peace, of the regularly documented United States vessel *Virginus*, under the flag of the United States, on or about the 31st day of October last, and the conveyance of the vessel, with her passengers, officers, and crew, into the port of Santiago de Cuba, within Spanish jurisdiction, and the execution of a large number of such passengers, officers and crew, and the detention of the remainder and of the vessel. These acts are regarded as violations of international law and treaty obligations."

On the 25th Admiral POLO called again upon Mr. FISH and read to him a telegram then received from the Minister of State at Madrid substantially insisting on delay to ascertain facts, on the plea that the *Virginus* "carried false papers, there being a contradiction between the description of the vessel and her papers." Among the remarks which Mr. FISH at once made in answer, appeared the following:

"The United States, in their own interests as well as in the interest of all maritime powers, cannot admit the right of any other power to capture on the high seas in time of peace a documented vessel bearing their flag. The flag which they give to a vessel must be its protection on the high seas against all aggression from whatever quarter, and they reserve to themselves the right to inquire whether the protection of that flag has been forfeited. * * * With regard to the *Virginus* the identity of the vessel captured cannot be questioned. It is known to be the same that received a United States register, issued at New York in September, 1870, a certified copy of which is now in Mr. FISH's possession, and is, in fact, on the table before him and Admiral POLO. * * * The alleged discrepancy between the description of the vessel and papers is technical. It may be that the vessel may have sustained damage requiring repairs,

which may have involved some change, as is suggested in her description; but it is the same vessel, and she has not been within the jurisdiction of the United States since a date immediately after that of her register, and, therefore, could not have such changes noted on that register. Her papers, therefore, must continue to give her a national character, and, with her flag, must be her protection,"

On the 27th Admiral POLO called once more at the State Department, when Mr. FISH read to him a telegram received that day from General SICKLES under date of the previous day in the following terms:

"At half-past two this afternoon, half an hour after I had asked for my passports, I received a note, dated to-day, from Minister of State, in which he says:—*First*. If it appear on or before the 25th of December next, that the *Virginus* rightfully carried the American flag, and that her documents were regular, Spain will declare the seizure illegal, salute the flag as requested, and return the ship with the surviving passengers and crew. *Second*. If it be proved that the authorities of Santiago de Cuba, in their proceedings and sentences pronounced against foreigners have essentially infringed Spanish legislation or treaties, this Government will arraign those authorities before competent tribunals. *Third*. Any other reclamations growing out of the affair, which either of the respective Governments may have to present, will be considered diplomatically, and if no agreement will be reached, they will be submitted to the arbitration of a third power named by mutual consent. *Fourth*. If the 25th day of December shall have expired without the Spanish Government having resolved, in so far as comes within its province, the questions arising out of the demand for reparation, it will hold itself bound to accord such reparation the same as if the right of the United States to require it were recognized, and such reparation will be given in the form specified in the first and second propositions."

Then Mr. FISH addressed several remarks to Admiral POLO with reference to the telegram just quoted, one of them being couched in this language:

"The propositions of Spain in the note communicated by General SICKLES in his despatch cannot be entertained, in that

the first proposition practically asks the United States to consent that Spain shall hold and detain the vessel while she is seeking evidence to justify an act in derogation of the Sovereignty and jurisdiction of the United States."

In answer to this remark, "Admiral POLO stated that he had received a strictly confidential and personal communication, requesting to be informed if it be possible to make an arrangement whereby, if the vessel and men be given up, Mr. FISH would engage that inquiry be instituted, and, if the result required, that punishment should be inflicted on those who had violated any laws of the United States, reserving until further information the salute to the flag." The reply which regarding this statement Mr. FISH made, after a short interval for consultation with the President, was substantially in the terms of the protocol which will presently appear in full. That reply being telegraphed by Admiral POLO to his government, and accepted by the same government as a basis of settlement, according to a telegram which under date of the 28th reached him from the Foreign Office at Madrid, brought about the following agreement, viz :

"Protocol of the Conference held at the Department of State, at Washington, on the 29th of November, 1873, between Hamilton Fish, Secretary of State, and Rear-Admiral Don Jose Polo de Bernabe, Envoy Extraordinary and Minister Plenipotentiary of Spain.

"The undersigned having met for the purpose of entering into a definitive agreement respecting the case of the Steamer *Virginus*, which, while under the flag of the United States, was on the 31st of October last captured on the high seas by the Spanish man-of-war *Tornado*, have reached the the following conclusions :

"Spain, on her part, stipulates to restore forthwith the vessel referred to, and the survivors of her passengers and crew, and on the 25th day of December next to salute the flag of the United States. If, however, before that date Spain should prove to the satisfaction of the Government of the United States that the *Virginus* was not entitled to carry the flag of the United States, and was carrying it at the time of her capture without right and improperly, the salute will be spontaneously dispensed with, as

in such case not being necessarily requirable; but the United States will expect in such a case a disclaimer of intent of indignity to its flag in the act which was committed.

“Furthermore, if on or before the 25th of December, 1873, it shall be made to appear to the satisfaction of the United States that the *Virginus* did not rightfully carry the American flag, and was not entitled to American papers, the United States will institute inquiry, and adopt legal proceedings against the vessel if it be found that she has violated any law of the United States, and against any of the persons who may appear to have been guilty of illegal acts in connection therewith; it being understood that Spain will proceed according to the second proposition made to General SICKLES, and communicated in his telegram read to Admiral Polo on the 27th inst., to investigate the conduct of those of her authorities who have infringed Spanish laws or treaty obligations, and will arraign them before competent courts and inflict punishment on those who may have offended.”

“Other reciprocal reclamations to be the subject of consideration and arrangement between the two Governments; and in case of no agreement to be the subject of arbitration, if the constitutional assent of the Senate of the United States be given thereto.”

“It is further stipulated that the time, manner, and place for the surrender of the *Virginus*, and the survivors of those who were on board of her at the time of her capture, and also the time, manner, and place for the salute to the flag of the United States, if there should be occasion for such salute, shall be subject to arrangement between the undersigned within the next two days.

(Signed) HAMILTON FISH,
JOSE POLO DE BERNABE.”

Such are the main features of the action developed by this Government on the *Virginus* case. During its development the restless sea of public opinion in this country ran boisterously and high; now dashing angrily upon the State Department,—now resounding with war cries, which mingled awfully with the din of bustling Navy Yards, where every available vessel was hastily fitting out to the great advantage of Government contractors and their confederates in office. But Commodore FISH

weathered the storm with his wonted skill, and doughtily held on to the helm of his ship until he came to an anchor in Protocol Harbor. Let us now see how fair the protocol looks in the sequel.

Owing to delay on the part of Spain, the last, or closing stipulation of the protocol was not duly acted upon before the 8th of December, when Mr. FISH and Admiral POLO met again, and agreed over their signatures that on the 16th of that month "the *Virginus* should be surrendered and restored by a Spanish vessel of war to a vessel of war of the United States in the harbor of Bahia Honda; that the survivors of those who were on board of the *Virginus* at the time of her capture should be surrendered to and safely escorted on board of a vessel of war of the United States in the harbor of Santiago de Cuba within 48 hours after the notification to the authorities of that place of the arrival of such vessel; and that on the 25th day of the same December a vessel or vessels of war of the United States would be in the harbor of Santiago de Cuba, where at noon that day the United States flag should be raised on a Spanish fort or battery and a salute of 21 guns fired, which would be duly returned by a vessel of the United States, which would raise the Spanish flag to that effect, if, according to the protocol, there should be occasion for such salute." A few days after this arrangement the *Virginus*, which had been taken to Havana, was stealthily run out of that place during the late hours of a dark night and conveyed by a Spanish man-of-war to the harbor of solitary Bahia Honda, where on the 16th of December an ensign of the Spanish navy delivered her over to the commander of the United States war vessel that arrived there to take charge of the *Virginus*, whose surviving crew and passengers to the number of 102 persons, were on the 18th of that month surrendered and conveyed on board of another war vessel of the United States at Santiago de Cuba. By this time the Attorney General of the United States, to whom for examination and decision, Secretary FISH had transmitted on the 11th of December, together with the copy of the protocol, a lengthy note from Admiral POLO, bearing date of the previous day and accompanying sundry papers on the ownership of the *Virginus*, had decided

that that vessel "at the time of her capture was without right and improperly carrying the American flag."

There were, among the papers adverted to, authenticated copies of the bill of sale, certificate of register and other documents issued at the New York Custom House, showing that the *Virginius* was duly owned by JOHN F. PATTERSON, who is a native born citizen of the United States. Against these documents were set up affidavits and depositions of several parties, who swore and deposed before a United States Commissioner to the effect that Mr. PATTERSON was not the real owner of the *Virginius*, but certain Cubans, who furnished him with the money to purchase her for their use in the struggle between Cuba and Spain. Over all such papers Attorney-General WILLIAMS brooded for several days, and then rendered his opinion upon the subject. In rendering it under date of the 17th of December, he reasoned thus :

"Section 1. of the Act of December 31st, 1792, provides that ships or vessels registered pursuant to such act 'and no other (except such as shall be duly qualified according to law for carrying on the coasting trade and fisheries, or one of them) shall be denominated and deemed ships or vessels of the United States, entitled to the benefits and privileges appertaining to such ships.' Section IV. of the same act provides for an oath, by which, among other things, to obtain the registry of a vessel, the owner is required to swear 'that there is no subject or citizen of any foreign Prince or State, directly or indirectly, by way of trust, confidence, or otherwise, interested in such ship or vessel, or in the profits or issues thereof.' Obviously, therefore, no vessel in which a foreigner is directly or indirectly interested is entitled to the United States registry, and if one is obtained by a false oath as to that point, and the fact is that the vessel is owned, or partly owned, by foreigners, she cannot be deemed a vessel of the United States or entitled to the benefits or privileges appertaining to such vessels

"The *Virginius* was registered in New York on the 26th of September, 1870, in the name of PATTERSON, who made oath as required by law, but the depositions submitted abundantly show that, in fact, PATTERSON was not the owner at that time, but that the vessel was the property of certain Cuban citizens in New

York, who furnished the necessary funds for her purchase. * * Nothing appears to weaken the force of this testimony, though the witnesses were generally subjected to cross-examination; but on the contrary, all the circumstances of the case tend to its corroboration. With the oath for registry the statute requires a bond to be given signed by the owner, captain, and one or more sureties; but there were no sureties upon the bond given by PATTERSON and SHEPHERD. * * * Assuming the question to be what appears to conform to the intent of the protocol, whether or not the *Virginus*, at the time of her capture, had a right, as against the United States, to carry the American flag, I am of the opinion that she had no such right, because she had not been registered according to law; but I am also of the opinion that she was as much exempt from interference on the high seas by another power, on that ground, as though she had been lawfully registered. Spain, no doubt, has a right to capture a vessel, with an American register, and carrying the American flag, found in her own waters assisting or endeavoring to assist, the insurrection in Cuba, but she has no right to capture such vessel on the high seas upon an apprehension that, in violation of the neutrality or navigation laws of the United States, she was on her way to assist such rebellion. Spain may defend her territory and people from the hostile attacks of what is, or appears to be, an American vessel; but she has no jurisdiction whatever over the question as to whether or not such vessel is on the high seas in violation of any law of the United States. Spain cannot rightfully raise that question as to the *Virginus*, but the United States may, and, as I understand the protocol, they have agreed to do it, and, governed by that agreement, and without admitting that Spain would otherwise have any interest in the question, I decide that the *Virginus*, at the time of her capture, was without right and improperly carrying the American Flag."

Leaving aside that the so-called testimony giving rise to the opinion above set forth is one-sided, as not a word was heard from Mr. PATTERSON, the defendant in the case—the cross-examination of witnesses being from the District Attorney, who appeared by direction of Secretary FISH, in consequence of a note which under date of the 23 of November he received from the Spanish Minister at Washington; that since the *Virginus*

sailed from this port in the autumn of the year 1870 until the very day of her capture, she was always commanded by a citizen of the United States, as the law requires, and had all her papers in proper order, notwithstanding the want of surety on the bond of her owner and master at Custom House; that in face of these facts the *Virginus* was in several instances protected at every hazard by United States cruisers against Spanish war vessel on the Caribbean sea, to the avowed satisfaction of this Government; that Mr. PATTERSON, if heard, might have proven that his transaction with the Cubans did not in the least affect his lawful ownership of the *Virginus*," and that on this account no fair decision could be given without hearing him in the premises,—let the language of the Attorney-General be the only ground on which to rest the case for argument.

Granting for the sake of argument that the affidavits and depositions before mentioned may be regarded as sufficient evidence to conclude therefrom that the *Virginus* at the time of her capture had no right, as against the United States to carry the American flag—the question recurs:—But why was she, however, exempt from interference on the high seas by another power? Because she was a regularly documented vessel of the United States, as her record showed, without the slightest plea to the contrary in United States court. On this ground, even as against the United States she had a right at the time of her capture to fly the American flag, the opinion of the Attorney-General to the contrary notwithstanding; for no man can be adjudged without right in any case whatsoever before it is proven, according to due process of law, that he is wrong. It follows, then, that the *Virginus* at the time of her capture was not only carrying the American flag rightfully and properly, as against Spain or any other power, but was also fully entitled to the protection of this Government, as a vessel of the United States to all intents and purposes. Therefore the capture of that vessel on the high seas involved a wanton outrage against the United States, which became terribly aggravated by the immediate slaughter of a large portion of her crew and passengers at the hands of Spanish authorities in Cuba. This was the question at issue, and not how Mr. PATTERSON got the money which he paid for the *Virginus* to this Government, or whether his Custom House bond for

registry of that vessel lacked the surety which similar bonds lack as regards many American ships without their nationality being impaired thereby. But the legal adviser of the Government preferred to conform strictly to the protocol, and the more so as his worthy colleague, the Secretary of State, in transmitting a copy of it to him, together with the other papers before mentioned, as received from the Spanish Minister, made particular reference thereto, and then remarked :

“The President desires your opinion upon the force of this evidence, whether it does substantiate to the reasonable satisfaction of this Government that the *Virginius* was not entitled to carry the flag of the United States, and was carrying it at the time of her capture, without right and improperly.”

This remark looks more like the “leading question” through which a shrewd lawyer elicits from his witness on the stand the answer wanted, than like the stern language befitting a note from the State to the Law Department of a great nation. But Mr. FISH on receipt of *his* answer, which he transmitted to Admiral POLO, pursuant to the terms of the protocol, received also an energetic, yet respectful letter from Mr. PATTERSON, the owner of the *Virginus*, protesting so far as himself and ship were concerned, against the decision of the Attorney-General, and requesting a copy of the proceedings giving rise to that decision, for him to examine the same and assert his rights in the premises at the proper time. This letter which was very ably written, scattered to the winds the opinion of Attorney-General WILLIAMS upon the subject, and the *Virginus* sank off the coast of North Carolina, while in tow of the United States sloop-of-war *Ossipee* ;* but the protocol remained afloat to be recorded in history beside the main facts of the case, as a remarkable diplomatic achievement on the part of Spain, and an everlasting stain on the fair escutcheon of the United States. To be sure, Spain notwithstanding her great responsibility in this case, yielded under the

* No vessel ever sank so conveniently as the *Virginus* did. Otherwise she would have become a source of considerable embarrassment and annoyance to Mr. FISH, in consequence of his having formally accepted the opinion of Attorney-General WILLIAMS, against the right of the *Virginus* to carry the American flag, and that opinion being untenable before an Admiralty Court, where the owner of the vessel would have obtained judgment for her recovery with damages. E.

protocol even less than she did for her comparatively light responsibility a few months previous in the case of the English yacht *Deerhound*, as that vessel which had been captured by a Spanish cruiser and found loaded with war materials for the Carlists in arms against the lawful Government of Spain, was on the demand of England given up with all her cargo and passengers, although among the latter were some prominent Carlists; whilst the United States owing to the same protocol fell short of full redress, from the fact that the *Virginus* instead of being sneakingly restored at an obscure place, was not surrendered in broad daylight at Havana under a salute from the batteries of that citadel to the American flag, and similar salute fired at the time of the surrender of her surviving crew and passengers in the Harbor of Santiago de Cuba, which together with the signal punishment of the perpetrators of the criminal deeds giving rise to such atonement, was the reparation due to the United States, and which irrespective of indemnity to the bereft relatives of the *Virginus* victims, England regarded as just and moderate, according to a telegram from General SICKLES to Mr. FISH under date of the 25th of November. But Mr. FISH, unmindful, it seems, of all this, as well as of the telegram, which on the 19th of November General SICKLES addressed to him, stating that "Spain asked the good offices of England, but that Lord GRANVILLE declined unless on the basis of ample reparation to the United States," gathered his telegraphic despatches of the 7th, 12th, and 14th of November above quoted, and with the assistance of Attorney-General WILLIAMS, buried them in the protocol, regardless of the angry screeches of the American Eagle, and the wailing of the relatives of the slaughtered crew and passengers of the *Virginus*.

LETTER FROM THE OWNER OF THE "VIRGINIUS."

No. 177 WEST STREET, }
 NEW YORK, December 26, 1873. }

Hon. HAMILTON FISH, Secretary of State:—

SIR,—I am the registered owner of the steamer *Virginus*, recently seized by the Spanish gunboat *Tornado*, which steamer, the newspapers inform me, has been since delivered to a United States naval officer, and is soon to arrive at this port.

Immediately after I knew of the seizure of the *Virginus* and the shooting of persons found on board of her, I consulted my counsel, informing them of all the facts relating to my ownership of that vessel, and was by them advised that our Government would certainly use all proper means to recover that vessel and bring her back to the United States—not because her voyage was innocent or I her owner, but because, in the situation in which she was found, our Government would maintain that no other nation had the right to determine these questions of nationality against the vessel or her owner, and therefore that the best course for me would be to do nothing in the matter for the time being, nor probably until the vessel was restored to the United States, unless, meanwhile, my Government should in some way, by its proper officers, call upon me for information.

Following the advice of my counsel, I have remained quietly in New York attending regularly to my business, well knowing that the Government could easily communicate with me if it desired, until now, when I learn from the newspapers that the Attorney-General of the United States on the 17th inst. condemned me and the *Virginus*—himself deciding both the law and the facts—in a proceeding to which I was not summoned, and against a vessel which was yet in the Gulf of Mexico.

The only copy of this opinion of the Attorney-General that I have seen has been in the New York newspapers of the 23d inst., and from such a copy I extract in this letter.

From this opinion I learn that on the 11th of December you wrote to the Attorney-General, submitting "a large number of documents and depositions;" after an examination of which he has written you a letter, which concludes as follows:—"I decide that the steamer *Virginus* at the time of her capture was without right and improperly carrying the American flag."

The foundation of fact upon which this opinion, or, as I should perhaps say (using the words of the Attorney-General), this decision seems to rest is stated by the Attorney-General to be because the *Virginus* "had not been registered according to law;" and this fact is said to have been proved by the testimony of certain witnesses named in the decision. The proceeding in which these witnesses were examined is not explained; but the Attorney-General invests their depositions with all the force which belongs to evidence, taken judicially, in the presence of the party to be affected thereby, who has had an opportunity to contradict the same; and he so invests them when he says:—

"Nothing appears to weaken the force of this testimony, though the witnesses were generally subjected to cross-examination;" and again, when he decided as follows:—

"I cannot do otherwise than to hold upon this evidence that PATTERSON'S oath was false, and that the registry obtained in his name was a fraud upon the navigation laws of the United States."

The plain import of these words is, that a legal investigation has been made against me, that I have cross-examined the witnesses, and that I have been unable to offer anything to "weaken the force of their testimony." If anything were needed to strengthen this plain inference from the language used the public has found the same in the improbability that the Attorney-General would assume to decide a question, affecting so seriously, not only the character and rights of an American citizen, but also the standing of the United States upon a question so important as that which was involved in his decision, without, at least, giving to the person most interested therein an opportunity to be heard.

How these proofs were taken I can only infer from the decision itself, which quotes from the protocol "that if Spain should prove to the satisfaction of the United States that the *Virginus* was not entitled to carry the flag," then a certain salute should be

dispensed with, and I, therefore, suppose that Spain furnished the proof, which, in the absence of any contradiction, has made a case "to the satisfaction" of the Attorney-General.

But whether this testimony was taken by Spain alone, or by the United States alone, or by the two Governments acting together, I know not, for I was not present and have not seen it. But I do know and do assure you that any testimony that I was not the true and sole owner of the *Virginus* at the time when she was registered is utterly false; for I did not swear falsely, but truly, when I took the oath necessary to obtain her registry as an American vessel, and of this I remain certain, notwithstanding the Attorney-General has decided that he "cannot do otherwise than to hold" to the contrary.

It is not part of my present purpose now to criticise the testimony which Spain has furnished to the Attorney-General. Spain had the right to make an *ex parte* case against me and the *Virginus*; and my Government could not but receive the same, and thereupon determine whether or not it would proceed against me and her in the courts by due process of law; and I suppose such was your object in referring this *ex parte* case to the Attorney-General for an opinion. Of all this I could not have complained: but, on the state of facts till now existing, I did not suppose it possible that Spain could, by a mere *ex parte* case, furnish proof "to the satisfaction of the United States" sufficient to obtain a judgment which, though it may not be final against me, would seem to be final and conclusive upon the United States in its controversy with Spain.

The Government had for months by its cruisers protected the *Virginus* against Spanish war ships, whose officers had protested that her registry papers were illegal; and within the last few weeks our country has been on the verge of a war with Spain, which war would have been justifiable only on the ground that the *Virginus* was American until the contrary was legally proved in a court of the United States; and I had been advised that no decision could be made against me and her, except after an open trial in court, in which accusers and accused would be alike represented.

It seems, however, that I have been wrongly advised.

The Solicitor of the Treasury had given me a bill of sale of the

Virginus, in which he had agreed with me and my assigns "to warrant and defend the said steamer against all and every person and persons whomsoever." I had thereupon sworn she was mine; and the Government had given her an American register, which has ever since protected her; when now, of a sudden, just as she is being escorted to the United States, not perhaps as herself innocent, but yet as a kind of trophy of successful negotiations to maintain the rights of the United States, this bill of sale, this oath, this register, this protection, and, as it seems to me, even this rejoicing over rights maintained, are each and all held to be a fraud both upon the United States and Spain; and this decision is made, to put it as strongly as possible, simply because, perhaps, a dozen persons have sworn that I did not pay the United States for the *Virginus* with my own money.

The property of any landlord might, by a similar process, be proved to belong to his tenant, if only half of the persons employed by that tenant could be made to swear that the landlord did not own the same; nor would anything "appear to weaken the force of this testimony," if the landlord were not called into court. And this might, perhaps, even be "corroborated" if it could not be "found" that either the landlord or the tenant had "insured" the building "after," as in the case of the *Virginus*, "pains had been taken to ascertain the same."

If, in Spain, an inquiry had been instituted which was to affect my rights of person or property I should have been protected by the seventh article of the treaty of 1795 between that country and the United States, which declares that United States citizens, in all trials in Spain in which their rights are concerned, "shall have free access to be present at the proceedings in such causes and at the taking of all examinations and evidence which may be exhibited."

But here in my own country, Spain furnishing *ex parte* evidence against me, I have been condemned, as I could not have been lawfully condemned even in Spain.

Leaving the case as the decision of the Attorney-General leaves it, it seems to me that Spain, after having violated her treaty obligations by executing American citizens in Cuba without due process of law, has succeeded, even without a hearing, in condemning both me and the *Virginus*, here in the United States,

where United States citizens should at least have as much protection against Spain as Spain has agreed to give them when they may be on trial in Spain. Even Captain FRY and his unfortunate companions have had one advantage over me; for they were present before the extemporized judge who condemned them upon evidence which, even if false, they yet heard.

Of course I am aware that, however controlling this decision may be in condemnation of my Government, the rights of individual citizens are so protected by the constitution that I cannot thereby be deprived of property or liberty; but yet, you well know that such a condemnation from what the statute has denominated the Department of Justice is calculated to injure me more than a verdict of a jury, and, as I have no appeal therefrom to a Supreme Court, I have felt it my duty, declaring my innocence, to make this protest against a decision which must alike have astonished and gratified that Foreign Government which, by its agents, has procured its depositions against me.*

In conclusion, I ask that you will please furnish me with a copy of the "documents and depositions" upon which I and the *Virginus* have been tried and condemned by the Attorney General, and that you will also please notify me of the time and place when and where any other witnesses are in this matter to be examined and "subjected to cross-examination."

I send a copy of this letter by the same mail to the Attorney-General, and shall think it due to myself to make the same public on the day of its probable receipt by you and him.

Yours respectfully,

JOHN F. PATTERSON.

* The record shows that Mr. SIDNEY WEBSTER, counsellor at law and son-in-law of Secretary FISL, was one of the agents of Spain, in the *Virginus* case.—E.

INDEMNITY TO THE BRITISH SUFFERERS IN THE "VIRGINIUS" CASE.

(From the *New York Herald*, October 17, 1874.)

The special despatch from London, printed in the *Herald* yesterday, provokes a mortifying comparison in the minds of patriotic Americans who recollect the high national tone of our diplomacy under former administrations. The British Government has recovered from Spain adequate pecuniary damages for the brutal outrages committed in Cuba against the ill-fated subjects captured on board the steamer *Virginus* and put to death in violation of law, justice and humanity, whereas the American Government, whose honor was insulted, its flag outraged and its citizens wantonly butchered, has received no corresponding reparation. Our claim to compensation is every way superior to that of Great Britain. It was against us that the chief outrages were perpetrated. According to the natural and proper course of proceeding our Government should have been the first to enforce satisfaction for that great affront and injury. We were the principal party in the controversy against Spain, and it was due to the national honor that our claim should stand first on the list and that reparation should have soonest been made to us as the chief complainant. It is the shame and scandal of the American administration—a shame and scandal which should bring blushes to the cheeks of the Secretary of State—that our demand for justice has been prosecuted with less vigor and success than that of England. It was not a British but an American vessel that was unwarrantably seized by the Spanish steamer *Tornado*. It was not the British but the American flag that was torn down with every mark of contumely and execration. Had British and American ships of war been present at the time in the West India waters where that outrage was committed it would have been the duty not of the British but of the American commanders

to interfere and rescue the captured *Virginius*. It was directly and peculiarly our affair and only remotely and indirectly the affair of the British Government. If there was any just order of precedence in making reparation for the injury our claim should have been pressed with most vigor and paid with most promptitude, because we were the party whose honor was most deeply involved and whose right to redress was the most incontestable. It is a burning humiliation to American diplomacy that in a case like this a subordinate party has taken the lead by its superior vigor, and has enforced satisfaction, while the American Government is still knocking in vain at the doors of Spanish justice.

Our means and facilities for enforcing our claims were every way superior to those of Great Britain, if our Government had but had the skill and energy to employ them. In the disturbed and revolutionary condition of Cuba we had what was equivalent to a hostage for the good behaviour of Spain. The Spanish Government is not ignorant of the deep sympathy of our people with the Cuban insurgents. American public opinion would, at any time since the *Virginius* outrage, have warmly supported the Government in recognizing the independence of the island and sundering forever the colonial tie which makes it an appanage of Spain. Had Mr. FISH taken advantage of the condition of Cuba he could easily have brought the Spanish Government to terms, and have saved himself from what even he must regard as the great humiliation of being eclipsed by the diplomacy of Great Britain in a matter wherein British honor and diplomacy are so slightly involved in comparison with those of the United States. It was not in the power of the British Government to press the Cuban question into its service. The American policy, commonly called "The Monroe Doctrine," which has been so constantly proclaimed to Foreign Governments for more than half a century, precluded Great Britain from making Cuba a lever for the enforcement of her claims. But Cuba lies at our door. It is only eighty miles from our coast. By its geographical position it belongs to the American political system. Our Government in former times made repeated offers to purchase it from Spain. Our people have always taken and continue to take a lively interest in its affairs. That fertile island is forbidden fruit to Great Britain; but to us it is, to borrow an expression of JOHN

QUINCY ADAMS when he was Secretary of State, a pear not yet fully ripe but certain at some future time to drop into our lap. Had Mr. FISH been keenly alive to the possibilities of the situation he could have so worked the Cuban question as to have made it a potent engine of coercion in compelling Spain to do us justice. He did not see his advantages. He has permitted England to get the start of him and force a recompense denied to us, in a case where our claim took precedence to hers and our means of making it respected were beyond all comparison superior. Mr. FISH has every reason to feel abashed that the English Foreign Minister has so got the start of him in recovering damages from Spain in a matter in which national honor bound us to stand forward as the foremost claimant.

All our impulses forbid us to be a severe critic of Mr. FISH. He is not only a citizen of the same State, but one of the most justly esteemed of our fellow townsmen. His social respectability and the pure lustre of his private virtues make it a most unpleasant duty to find fault with his official shortcomings. But the seductive courtesy and complaisance which make a high-toned host the most delightful of entertainers are misplaced if they lead an appointed guardian of the national honor to be too gentle and easy in his official dealings with Foreign Governments. Softness and refined courtesy deserve every kind of encomium in their proper place, but they cannot be put into the scale against justice and honor in the intercourse of Governments. A high, proud and even punctilious sense of what is due to the character of the Government he represents is one of the first duties of a Minister for Foreign Affairs. The courtesy of such a functionary should be reserved for his social intercourse with the representatives of other Governments; but in all matters which concern the honor of the country and justice to its citizens he should be as firm and unbending, and he would lose nothing in being as vigorous and aggressive, as Lord PALMERSTON was when British interests were in his keeping. A Government which brooks no approach to an insult, which is prompt in its resentments, which asserts and vindicates the rights and interests of its citizens or subjects in the highest tone, avoids a hundred difficulties and complications into which it might be drawn by a feeble and vacillating attitude toward Foreign Powers. There is always a great

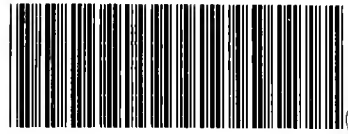
clearing of space around a thoroughly determined individual or a thoroughly determined Government. When it is well understood that a Government will not allow itself to be trifled with and will stand no nonsense the paths of its diplomacy are open and easy. The British Government has established this kind of reputation, and Spain did not dare to brave its resentment by withstanding its claims in the *Virginius* case. But the halting feebleness of our recent American diplomacy has taught that weak Government that it incurred no risk in postponing American demands for redress.

If Mr. SEWARD faltered and trimmed in the diplomacy of the war he had a justifiable excuse. When he backed down in the Trent affair, when he pocketed the Monroe doctrine and the insult to our Government in the attempt of France to establish an empire in Mexico, he acted under a stress of circumstances which left him no choice. A foreign war in either of those conjunctures would have assured the success of the Southern rebellion, and he wisely forebore to take the high and defiant ground on which our Government would have stood if its existence had not been in peril. Mr. FISH has no such excuse in dealing with a weak nation like Spain at a time when we had no other foreign complications. There was not a Government in Europe which would have interfered in a quarrel between us and Spain. We were in a position to dictate the mode and measure of redress which was due to our insulted flag and injured citizens, and it is owing to the sheer feebleness of the Administration that Great Britain has succeeded in enforcing just redress for injuries which were primarily committed against us and in which her claim was subordinate and incidental to ours.

Previous to the war no nation was so proud and exacting on all points of national honor and all occurrences which involved any question of protection to our citizens as the United States. No nation then dared insult us; no nation then dared refuse redress for a manifest wrong; no nation ventured to make a complaint without getting a taste of the vigor of our diplomacy. The most noted diplomatic papers of WEBSTER and MARCY, both addressed to the Austrian Government, are cases in point. The abasement of our national pride under the abject foreign policy of President GRANT is a humiliation to which the American people cannot be reconciled.



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